Appeal from Circuit Court, Halifax County.

Suit by C. H. Beasley & Bros., Inc., against R. C. Canada and wife. From a decree for complainant, respondents appeal. Reversed.

James H. Guthrie, of South Boston, for appellants.

Frank L. Thomasson, of Lynchburg, and *Jas. S. Easley,* of Halifax, for appellee.

EWING *v.* HAAS, Circuit Judge.

March 16, 1922.

[111 S. E. 255.]

1. **Prohibition (§ 9*)—Writ Will Be Awarded to Prevent Disqualified Trial Judge from Sitting.**—Where a trial judge is in fact disqualified to sit in a case but, notwithstanding such disqualification, is allowed to sit therein, a writ of prohibition may be awarded, although the court over which respondent presides has jurisdiction of the cause.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 395.]

2. **Attorney and Client (§ 63*)—Contract of Employment Express or Implied Necessary to Create Relation.**—To establish the relation of attorney and client, there must be a contract of employment, express or implied, between the attorney and the party for whom he appears, or some one authorized to represent him.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 149.]

3. **Judges (§ 49 (2)*)—Trial Judge Held Not Disqualified to Sit because of Aiding in Preparation of Brief on Appeal.**—Where a trial judge, after having decided that a cause before him was triable at law and not in equity, furnished data for appellee's brief on appeal, and the case was affirmed, a writ of prohibition to prevent him from sitting in the law case will be refused, there being a mere bias arising as to the conclusion on the purely legal question as to whether the case was triable at law or equity, which had previously been decided on appeal.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 157.]

Petition by one Ewing against T. N. Haas, Judge of the Twenty-Fifth Judicial Circuit, for a writ of prohibition. Petition refused.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Ed. C. Martz, D. O. Dechert, and *Jno. T. Harris,* all of Harrisonburg, and *Hugh A. White,* of Lexington, for petitioner.

H. W. Bertram, Geo. S. Harnsberger, Geo. N. Conrad, all of Harrisonburg, for respondent.

THANIEL *v.* COMMONWEALTH.

March 16, 1922.

[111 S. E. 259.]

1. **Homicide (§ 254*)—Evidence Held to Sustain Conviction of Second Degree Murder.**—Where the evidence showed that, after defendant had begun shooting, the deceased drew his pistol and began shooting, not at defendant but in the air and that defendant suddenly turned and shot and killed deceased, while defendant denied shooting deceased, claiming he fired only into the air, a verdict of guilty of murder in the second degree was sustained by the evidence.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 153.]

2. **Homicide (§ 9*)—Intent to Kill Need Not Exist Any Length of Time to Constitute Murder.**—To constitute murder, even in the first degree, it is not necessary that the intent to kill should have existed for any particular length of time, so that the fact that no previous quarrel or grudge between accused and deceased was proved is not conclusive against murder.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 117.]

3. **Homicide (§ 223*)—Testimony as Witness Summoned before Corner's Inquest Is Not in Defendant's Behalf, though Exculpatory.**—Where defendant testified at the corner's inquest before he was accused of the homicide but had been summoned as a witness and did not voluntarily appear, his testimony, even though it tended to exculpate him, was not in his behalf.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 147.]

4. **Witnesses (§ 379 (9)*)—Accused Testifying for Himself Can Be Cross-Examined as to Conflicting Testimony at Coroner's Inquest.**—Under the statute permitting accused to testify in his own behalf subject to cross-examination which, as incorporated in Code 1919, § 4778, was amended to provide that by so testifying he waived immunity, the provision of § 4781 that evidence shall not be given against accused of any testimony made by him as a witness upon a legal examination unless it was made when examined in his own behalf, which was intended to protect his immunity against compulsory testimony, does not prohibit the cross-examination of accused as to testimony given at the coroner's inquest, especially where his testimony

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.